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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,332	07/01/2003	Francis T. Azzarello	USCC 8057US	3768
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POLSTER, LIEDER, WOODRUFF & LUCCHESI 12412 POWERSCOURT DRIVE SUITE 200 ST. LOUIS, MO 63131-3615			LHYMN, EUGENE	
		ART UNIT		PAPER NUMBER
		3727		

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/611,332	AZZARELLO, FRANCIS T.	
	Examiner Eugene Lhymn	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on ____.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-25 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1-25 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 7/1/03 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to because the subject matter pertaining to claims 6, 9, and 25 are not clearly disclosed in the drawings. Specifically, the upper end ring's flange wherein the flange prevents the bail from returning to its original position is not clearly disclosed in the drawings. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 6, 7, 8, 9-16, and 25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 6, 9 and 25 call for an outwardly extending flange – bail-tab interface that is not clearly disclosed in the drawings or specification. Exactly how the bail is connected to the container is unclear in addition to how the bail-tab interacts with the outwardly extending flange. Appropriate correction is required.

4. Claims 1-8, 10-16, 18, and 19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 1, 10, and 18 call for the container, when empty, does not hang vertically, but when full does hang vertically. Exactly how the container does not tip when full, while being lifted, is unclear. Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, 6, 9-11, 17-19, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Drogos (US 5027973). With respect to claim 1, Drogos discloses the following:

a container body having a base and a circumferential sidewall extending upwardly from the base, the upper end of the sidewall forming an open top for the container (Fig. 2);

a bail for lifting and carrying the container, the bail being a plastic bail integrally molded with the container body (Col. 1, Lines 26-29), the respective ends of the bail being formed with the sidewall of the container body adjacent an upper, open end thereof the sidewall having bosses integrally molded (Fig. 7, item 36) therewith and projecting outwardly from the sidewall for connecting the ends of the bail with the container body, the spacing of the bosses being less than 180 degrees apart (Fig. 7). To the degree that the claim is understood, the container of Drogos must perform the function that, when empty and lifted using the bail does not hang vertically, but when full does hang vertically as a result from the boss spacing being less than 180 degrees.

With respect to claim 2, Drogos discloses the bosses being spaced approximately 140 degrees apart, as is evident in Fig. 7, wherein the bosses, item 36,

are clearly spaced at approximately 140 degrees, as Fig. 7 shows the bosses spaced less than 180 degrees and greater than 90 degrees.

With respect to claim 3, Drogos discloses the thickness of the base as being uniform throughout the length of the bail and the base and sidewall bail thickness being substantially the same thickness as the container sidewall, as is shown in Fig. 7. Based on Fig. 7, the bail thickness, as shown in item 30, and the container sidewall thickness, as shown in item 23, are substantially the same thickness upon visual inspection. With respect to claim 6, to the degree that the claim is understood, Drogos teaches a container having a ring attached to the upper end of the container having a flange extending outwardly (Fig. 3, item 21) from the container and tabs being formed on the bail (Fig. 2, item 36), the tabs extending past the flange, which the tabs inherently extend outwardly past the flange, when the container is lifted by someone grasping the bail, with the flange preventing the bail from returning to its original position until the container is again set down, wherein the original position is the undeformed position, and the position while the container is being grasped and lifted is a deformed shape. When the empty container is lifted, the container will naturally tilt due to the flexible tab-flange connection and the location of the tabs being off-centered.

With respect to claim 9, to the degree that the claim is understood, Drogos discloses the following:

a container body having a base and a circumferential sidewall extending upwardly from the base, the upper end of the sidewall forming an open top for the container (Fig. 2, item 10);

a bail for lifting and carrying the container, the bail being a plastic bail integrally molded together with the container (Col. 1, Lines 26-27), the bail being initially attached to the container body by tabs formed in the mold with the bail and the container body, the bail being subsequently detached from the container body by breaking off the tabs, which is a product-by-process claim wherein it has been held that method limitations in a product claim do not serve to patentably distinguish the claimed product from the prior art. See *In re Thorpe*, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985). Thus, even though a product-by-process claim is limited and defined by a process, determination of patentability is based on the product itself. Accordingly, if the product in a product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process.

Thorpe, 777 F.2d at 697, 227 USPQ at 966; *In re Marosi*, 710 F.2d 799, 218 USPQ 289 (Fed. Cir. 1983);

the sidewall having attachment bosses integrally molded therewith and projecting outwardly from the sidewall for connecting the ends of the bail to the container body (Fig. 3, item 36), the thickness of the bail being substantially uniform throughout the length of the bail, as shown in Fig. 7;

a ring fitting onto the upper end of the container and having a flange (Fig. 3, item 21) extending outwardly from the container, tabs being formed on the bail (Fig. 3, item 26) and extending past the flange when the container is lifted by someone grasping the bail, the flange then preventing the bail from returning to its original position until the container is again set down, wherein the original position is the undeformed position,

and the position while the container is being grasped and lifted is a deformed shape.

When the empty container is lifted, the container will naturally tilt due to the flexible tab-flange connection and the location of the tabs being off-centered.

With respect to claim 10, Drogos discloses the bosses being less than 180 degrees apart, as shown in Fig. 3, item 36.

With respect to claim 11, Drogos discloses the bosses being spaced at approximately 140 degrees, as shown in Fig. 7, item 36, as Fig. 7 shows the bosses spaced less than 180 degrees and greater than 90 degrees.

With respect to claim 17, Drogos discloses a container comprising the following:

- a plastic molded can body including a base with an integrally formed circumferential sidewall extending upwardly from the base (Fig. 2, item 11), the upper end of the sidewall forming an open top for the container (Fig. 2);
- a plastic lid for covering the opening to shut the can (Col. 2, Lines 16-18);
- a bail for lifting and carrying the container, the bail being a plastic bail integrally molded together (Col. 1, Lines 26-28) with the can and attached to the can by tabs formed in the mold, the bail subsequently being detached from the can by breaking off the tabs, wherein it has been held that method limitations in a product claim do not serve to patentably distinguish the claimed product from the prior art. See *In re Thorpe*, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985). Thus, even though a product-by-process claim is limited and defined by a process, determination of patentability is based on the product itself. Accordingly, if the product in a product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even

though the prior art product was made by a different process. *Thorpe*, 777 F.2d at 697, 227 USPQ at 966; *In re Marosi*, 710 F.2d 799, 218 USPQ 289 (Fed. Cir. 1983);

the sidewall of the can body having attachment bosses integrally molded therewith and projecting outwardly from the sidewall for connecting the ends of the bail to the can (Fig. 2, item 36), the thickness of the bail being substantially uniform throughout the length of the bail, which is shown in Fig. 7.

With respect to claim 18, Drogos discloses, to the degree that the claim is understood, the spacing of the bosses being less than 180 degrees apart (Fig. 7) for the paint can, when empty and lifted using the bail does not hang vertically, but when full does hang vertically, wherein the combination of the weight of the can and the location of the bail connection causes the empty bail to not hang vertically when lifted, and to hang vertically when full., Drogos must teach this function as he teaches all of the structure set forth.

With respect to claim 19, Drogos discloses the bosses being spaced approximately 140 degrees apart (Fig. 7, item 36).

With respect to claim 25, to the degree that the claim is understood, Drogos discloses a ring fitting onto the upper end of the container and having a flange (Fig. 3, item 21) extending outwardly from the container, tabs being formed on the bail (Fig. 3, item 26) and extending past the flange when the container is lifted by someone grasping the bail, the flange then preventing the bail from returning to its original position until the container is again set down, wherein the original position is the undeformed position,

and the position while the container is being grasped and lifted is a deformed shape, due to the flexible tab-flange connection and the location of the tabs being off-centered.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4, 5, 12-16, and 20-24 rejected under 35 U.S.C. 103(a) as being unpatentable over Drogos in view of Schaper et al. (US 6443325 B1). With respect to claim 4, Drogos discloses the claimed invention except for the cross-section of the bail being transformed from a channel shape to a substantially flattened shape at a point substantially equidistant from the bosses on the side of the container body where the bail attaches to the container. However, Schaper et al. teaches a plastic container wherein the cross-section of the handle transforms from a channel shape to a substantially flattened shape at a point substantially equidistant from the bosses on the side of the container body where the bail attaches to the container, as shown in Fig. 4, item 20, which shows the transition to substantially flattened shape, and Fig. 3b, item 20, which shows the channel cross-section. Having a transition to substantially flattened shape provides improved flexure properties at the bail-container interface.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the container-bail assembly of Drogos with the bail configuration of Schaper et al. so as to provide improved flexure properties of the bail-container interface.

With respect to claim 5, Schaper et al. teaches the flattened region of the bail being configured such that when the container is set in place and the bail is swung downward, the flattened region will extend vertically, as is shown in Fig. 1, wherein the flattened region clearly extends vertically when the container is set in place.

With respect to claim 12, Drogos discloses the claimed invention except for the bail comprising a U-shaped channel. However, Schaper et al. teaches a container having a U-shaped channel configuration (Fig. 3b, item 36). Having a U-shaped channel improves stiffness of the bail, thus providing a more robust bail. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the container-bail assembly of Drogos with the U-shaped bail configuration of Schaper et al. so as to improve the stiffness of the bail.

With respect to claim 13, Drogos discloses the thickness of the base and sidewalls of the bail to be substantially the same thickness as the sidewall of the container body, as is shown in Fig. 7. Based on Fig. 7, the bail thickness, as shown in item 30, and the container sidewall thickness, as shown in item 23, are substantially the same thickness upon visual inspection.

With respect to claim 14, Schaper et al. discloses the cross-section of the bail being transformed from a channel shape to a substantially flattened shape at a point

substantially equidistant from the bosses on the side of the container body where the bail attaches to the container (Fig. 4, item 20).

With respect to claim 15, Schaper et al. discloses the flattened portion of the bail extending vertically, parallel to the longitudinal centerline of the container body when the container is set in place, as is shown in Fig. 1.

With respect to claim 20, Drogos discloses the claimed invention except for the bail comprising a generally U-shaped channel cross-section. However, Schaper et al. teaches a plastic container wherein the bail comprises a generally U-shaped channel cross-section (Fig. 3b, item 20). The U-shape cross-section improves stiffness of the bail. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the container-bail assembly of Drogos with the bail configuration of Schaper et al. so as to improve stiffness of the bail.

With respect to claim 21, Drogos teaches the thickness of the base and sidewalls of the bail being substantially the same thickness as the sidewall of the can body, as is shown in Fig. 7. Based on Fig. 7, the bail thickness, as shown in item 30, and the container sidewall thickness, as shown in item 23, are substantially the same thickness upon visual inspection. With respect to claim 22, Schaper et al. teaches a plastic container wherein the cross-section of the handle transforms from a channel shape to a substantially flattened shape at a point substantially equidistant from the bosses on the side of the container body where the bail attaches to the container, as shown in Fig. 4, item 20, which shows the transition to a substantially flattened shape, and Fig. 3b, item 20, which shows the channel cross-section.

With respect to claim 23, Schaper et al. teaches the flattened region of the bail being configured such that when the container is set in place and the bail is swung downward, the flattened region will extend vertically, as is inherently shown in Fig. 1, wherein the flattened region clearly extends vertically when the container is set in place.

With respect to claim 24, Schaper et al. teaches the flattened aspect of the bail extending horizontally when the bail is raised to a vertical position for carrying the container, as is shown in Fig. 2, item 20.

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Drogos in view of Gall (US 4357042). Drogos discloses the claimed invention except for the flattened region of the bail to be configured such that when the container is being carried, the flattened region extends horizontally. However, Gall teaches a bail in which the flattened portion of the bail extends horizontally when the container is being carried, which is evident in Fig. 1. A flattened portion provides an ergonomic grip, thus making the bail more user-friendly. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the container-bail assembly of Drogos with the bail configuration of Gall so as to provide a user-friendly, ergonomic grip.

10. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Drogos in view of Gall as applied to claim 7 above, and further in view of Letica (US 5875913). Drogos discloses the claimed invention except for the flattened portion of the bail having grooves. However, Letica teaches a container having a bail with a grooved portion (Fig.

1, item 35), thereby reducing stress on the fingers. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the container-bail assembly of Drogos with the grooved portion of Letica so as to reduce stress on the user's fingers while gripping the bail.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Seabold (US 5080281)

Budert (US 4682688)

Jennings et al. (US 3000527)

Hodgson et al. (US 1660841)

Kaas et al. (US 3331527)

Wilkins (US 3889732)

Balint et al. (US 2710705)

Tarna (US 4941586)

Bauer (US 3208630)

Georgiadis (US 5526954)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWTh 8:30-7:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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